

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MYRON WAGNER,

Defendant.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 4/4/2022

No. 20-CR-410 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Defendant Myron Wagner (“Defendant”) is charged in a one count indictment with being a felon in possession of a firearm in violation of Title 18 U.S.C. § 922(g)(1) and (2). (ECF No. 9.) On April 4, 2022, prior to commencement of trial on the same date, the Court discussed on the record the parties’ motions *in limine* filed by the Government on April 2, 2022 (ECF No. 73) and April 3, 2022 (ECF No. 76) and by the Defendant on April 3, 2022 (ECF No. 75). Specifically, the Government seeks to exclude two screenshots from an officer’s body camera which Defendant intends to use in his defense (ECF No. 73) and to exclude three defense exhibits: (i) a purported social media post by Defendant’s ex-girlfriend from July 9, 2020, (ii) a recording of an alleged conversation between Defendant and his ex-girlfriend on April 7, 2020, and (iii) a transcript of the April 7, 2020 recording (ECF No. 76). Defendant seeks to exclude portions of witness Dan Pense’s testimony and two government exhibits of Dan Pense’s 911 calls from evidence (ECF No. 75).

“Because a ruling on a motion *in limine* is ‘subject to change as the case unfolds,’ this ruling constitutes a preliminary determination in preparation for trial.” *United States v. Perez*, No. 09 CR 1153 MEA, 2011 WL 1431985, at \*4 (S.D.N.Y. Apr. 12, 2022) (quoting *Palmieri v. Defaria*, 88 F.3d 136, 139 (2d Cir. 1996)). As discussed on the record, the Court preliminarily rules as follows: (1) The Government’s motion to exclude two screenshots from an officer’s body

camera (ECF No. 73) is DENIED. The screenshots are relevant evidence which may be admitted if counsel lays a proper foundation. (2) Defendant's motion to exclude portions of Dan Pense's testimony and his 911 calls that are not based on the witness's personal observations (ECF No. 75) is GRANTED. Any hearsay evidence contained in Dan Pense's testimony and/or his 911 calls are not admissible. And, (3) the Government's motion to exclude the three defense exhibits (ECF No. 76)—Defendant's ex-girlfriend's purported social media post from July 9, 2020 and a recording and transcript of Defendant and his ex-girlfriend's purported conversation on April 7, 2020—is DENIED. This evidence is preliminarily deemed admissible, provided that counsel lays a proper foundation. However, this does not preclude the Government from making any relevant objections at trial.

The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 73, 75, and 76.

Dated: April 4, 2022  
White Plains, New York

SO ORDERED:

A handwritten signature in dark ink, appearing to read 'Nelson S. Román', is written over a light blue horizontal line.

NELSON S. ROMÁN  
United States District Judge